

EXPLANATION OF COUNCIL BILL NO. 259387

MEMO TO: The Honorable Mayor
& City Council

FROM: M. Lyle Lacy, III
City Manager

DATE: February 6, 1987

SUBJECT: CONSOLIDATED RETIREMENT PLAN

Attached is the proposed consolidated retirement plan for the City of Marietta employees.

The proposed Plan removes the distinction between Level 1 and 2 employees and treats all Participants alike. Those Participants that prefer to remain covered by the current Plan may do so. Employees who wish to join the consolidated Plan may do so through election during a special 90 day period following the proposed Plan effective date.

Thus, under the proposed Plan any appearance of special or different employee groups is eliminated. Retirement (other than disability) will not be possible prior to age 55. Those new Participants that terminate their employment prior to age 55 and do not return to employment with the City will not be entitled to a pension benefit prior to age 65.

At normal retirement age, the proposed benefit formula provides an increased benefit for all Participants. Thus, these Participants are allowed the choice of the current or proposed Plans. The "85 Point" unreduced pension is a feature that will certainly reward those who begin their City employment at a relatively early age and continue their employment uninterrupted. A 25 year old can thus spend 30 years with the City and retire at age 55 with a full unreduced pension. However, it should be noted that since the pension formula is based upon final average earnings and a maximum of 35 years credited service, this person may continue working and accrue a higher pension entitlement. Thus, the "85 Point" could be viewed as a significant reward to long service employees by providing them with increased retirement flexibility. Because there is only one class of Participant in the proposed Plan, and benefits are calculated on a percentage of pay and service basis, the proposed Plan could be viewed as creating "benefit equity."

Listed on the attached is a summary of the features highlighting the Plan.


M. Lyle Lacy, III

MLL, III/srh

Attachment

SUMMARY OF
CONSOLIDATED RETIREMENT PLAN
FOR THE EMPLOYEES OF
THE CITY OF MARIETTA, GEORGIA

PARTICIPATION

- All current participants will have the option to participate in the new plan or continue to be participants in the existing plan, new participants must meet the eligibility provisions as outlined in the current plan.

NORMAL RETIREMENT DATE

- First day of the month following or coincident with the later of the participant's 65th birthday and the completion of 5 years of credited service.

EARLY RETIREMENT

- Age 55 or more with a minimum of 5 years credited service.

DISABILITY RETIREMENT

- No change from the current plan.

SPECIAL ELECTION PERIOD

- All current participants have 90 days from the new plan effective date of March 1, 1987 to elect to be covered under the new plan, failure to elect will mean automatic coverage under the current plan.

NORMAL RETIREMENT PENSION

- 2 $\frac{1}{2}$ times final average earnings.

FINAL AVERAGE EARNINGS

- No change from the current plan.

85 POINT PENSION

- When a participant's age plus credited service total 85, the participant is eligible to begin receiving an unreduced retirement pension - participants whose age is less than 55 that have 85 points will be eligible for an unreduced retirement pension upon reaching age 55.

EARLY RETIREMENT PENSION

- The accrued normal retirement pension is reduced by $\frac{1}{4}$ of 1 percent for each month the participant's age at early retirement is less than 65.

NORMAL BENEFIT FORM

- No change from the current plan-lifetime benefit without survivor continuation.

BENEFIT FORM OPTIONS

- Normal Benefit
Social Security Option
Joint & Survivor Option

BREAK-IN-SERVICE PENSION
ELIGIBILITY

- All future participants that incur a break-in service will only be entitled to a benefit at their normal retirement date.

AN ORDINANCE

ADOPTING a Consolidated Retirement plan for the employees of the City of Marietta, Georgia.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA, THAT:

Section 1: The Consolidated Retirement Plan for the employees of the City of Marietta, Georgia, a copy of which is attached hereto as Exhibit "A" and by reference made a part hereof, is hereby adopted for the employees of the City of Marietta, Georgia, on the following terms and conditions:

(a) Each employee hired after March 1, 1987 (the effective date of this Consolidated Retirement Plan) shall be eligible to participate in the Consolidated Retirement Plan as provided for therein. Each new employee hired after March 1, 1987 shall have no right whatsoever to participate or become eligible to participate in the Retirement Plan adopted by Ordinance No. 4022.

(b) Each employee that is employed with the City of Marietta, Georgia on March 1, 1987 shall have the right to either remain with the Retirement Plan adopted by Ordinance No. 4022 or elect to participate in the Consolidated Retirement Plan adopted by this Ordinance. Each employee that elects to participate in this Consolidated Retirement Plan shall make said election in writing and shall waive and relinquish any and all rights to participate or receive any benefits from the Retirement Plan adopted by Ordinance No. 4022 as it was originally enacted or any benefits adopted by any amendments to Ordinance No. 4022. The period to make this election shall be for a period of ninety (90) days commencing on March 1, 1987 and ending on May 29, 1987. Any employee that has not elected to participate in the Consolidated Retirement Plan by May 29, 1987 shall automatically remain a participant in the Retirement Plan adopted by Ordinance No. 4022 and shall have no right whatsoever to participate or become eligible to participate in the consolidated Retirement Plan adopted by this Ordinance.

Section 2: All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed, except as provided in Section 3.

COUNCIL BILL NO: 259387

ORDINANCE NO: 4532

Section 3: The rights and obligations under the Retirement Plan approved September 20, 1973, as amended, with respect to persons whose employment with the City was terminated for any reason whatsoever prior to the effective date of this Ordinance are fixed and shall be governed by such Retirement Plan as it existed and was in effect at the time of such termination.

Section 4: The effective date of this Ordinance shall be March 1, 1987.

DATE: February 11, 1987

APPROVED: Vicki Chestain
Mayor and Council

ATTEST: William C. Harris
City Clerk

**CONSOLIDATED
RETIREMENT PLAN
FOR THE EMPLOYEES OF
THE CITY OF MARIETTA, GEORGIA**

Effective March 1, 1987

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**CONSOLIDATED RETIREMENT PLAN FOR
EMPLOYEES OF THE CITY
OF MARIETTA, GEORGIA**

ARTICLE I

PURPOSE

This Ordinance shall constitute the Consolidated Retirement Plan of the City of Marietta, Georgia for the exclusive benefit of the City Employees according to the terms and conditions hereinafter contained; and said Ordinance shall be subject to amendment from time to time by the City. The provisions of this Plan shall be effective March 1, 1987.

ARTICLE II

DEFINITIONS

Whenever the terms set forth below are used in this Plan, they shall have the meanings indicated below, unless a different meaning is plainly required by the context. Masculine pronouns, when used throughout the Plan, shall refer to both men and women, and the singular shall include the plural, unless the context indicates otherwise. Headings of sections are used for convenience of reference, and in the case of conflict, the text of the Plan, rather than such headings, shall control.

Section 1. Actuarial Present Value. Unless otherwise specified in the Plan, the Actuarial Present Value of a benefit shall be determined using the interest rate prescribed by the Pension Benefit Guaranty Corporation for valuing annuities under the single-employer plans that terminate without a Notice of Sufficiency during the first month of the calendar year in which the date as of which the benefit is valued, occurs. The mortality assumption shall be based on the 1971 Group Annuity Mortality Table, weighted as follows:

- (a) For a Participant's benefit, 80% male and 20% female;
- (b) For the benefit of a Participant's Spouse or former Spouse, 20% male and 80% female; and
- (c) In any other case, 50% male and 50% female.

"Actuarial Equivalence" means two benefits of equal Actuarial Present Value based on the factors and assumptions specified in the provisions in which that phrase is used or, if not otherwise specified, based on the assumptions described in this Section.

Section 2. Actuary. "Actuary" shall mean an actuary who is enrolled under subtitle C of Title III of the Federal Employee Retirement Income Security Act of 1974.

Section 3. Beneficiary. "Beneficiary" shall mean the person(s) designated by the Participant to receive any death benefits. For purposes of this definition, "person" shall include only a natural person(s) and shall not include a corporation, estate or other such entity.

Section 4. City. "City" shall mean the City of Marietta, Georgia.

Section 5. Credited Service. "Credited Service" shall mean the years of credit for work with an Employer which is used to determine the amount of benefits payable under this Plan, including Past Credited Service, for work prior to November 1, 1973 and Future Credited Service, for work after November 1, 1973.

Section 6. Disability. A Participant will be considered disabled if unable, solely because of disease or accidental bodily injury, to work at his or her own occupation or at any reasonable occupation for which the Participant may be engaged, or may reasonably become engaged, fitted by education, training or experience provided, however, that such disability shall not have been (a) self-inflicted; (b) incurred in military service; (c) incurred in the commission of a felonious enterprise; or (d) the result of the use of narcotics and/or drugs and/or alcohol.

Section 7. Early Retirement Age. "Early Retirement Age" shall mean the date a Participant attains age fifty-five (55) and has completed at least five (5) years of Credited Service.

Section 8. Earnings. "Earnings" shall mean the total compensation paid to an Employee of the City for Service rendered, but shall exclude compensation for overtime and reimbursed expenses. Earnings shall include holiday and vacation pay and payments made by the City on behalf of an Employee during periods of authorized absence for illness and other reasons.

Section 9. Effective Date. "Effective Date" shall mean March 1, 1987 for the purpose of this Consolidated Plan.

Section 10. Employee. "Employee" shall mean a person who is regularly employed for at least thirty (30) hours per week, in the services of the City and Marietta Board of Lights and Water, or any person who is an elected or appointed member of the Governing Authority.

The term Employee shall not include:

- (a) Employees, other than elected and appointed members of the Governing Authority, who regularly work less than thirty (30) hours per week in the service of the City;
- (b) Any person employed by the City to perform scientific, technical, engineering, accounting, legal, or similar expert services in a consulting capacity;
- (c) Any person employed for less than twelve (12) months in any year, or on a retainer contract or fee basis; or
- (d) City Solicitor and Chief Judge - Municipal Court for the City.

Section 11. Employer. "Employer" shall mean the City of Marietta, Georgia.

Section 12. Final Average Earnings. "Final Average Earnings" shall mean the average monthly earnings paid to a Participant during the thirty-six (36) full months preceding his actual date of Retirement in which his Earnings were highest.

Section 13. Governing Authority. "Governing Authority" shall mean the Mayor and Council of the City of Marietta, Georgia.

Section 14. Investment Manager. "Investment Manager" shall mean a person or company who:

(a) has the power to manage, acquire, or dispose of any asset of the Plan;

(b) who is

(1) registered as an investment adviser under the Investment Advisers Act of 1940;

(2) is a bank, as defined in that act; or

(3) is an insurance company qualified to perform services described in subparagraph (a) under the laws of more than one state; and

(c) has acknowledged in writing that it is a fiduciary with respect to the Plan.

Section 15. Normal Retirement Age. "Normal Retirement Age" shall mean the date a Participant attains age sixty-five (65) and has completed at least five (5) years of Credited Service.

Section 16. Normal Retirement Date. "Normal Retirement Date" shall mean the first day of the month coinciding with or next following the Participant's Normal Retirement Age.

Section 17. OASDI. "OASDI" shall mean the Old-Age and Survivors Disability Insurance program under the Social Security Act or the successor Act as further amended.

Section 18. Participant. "Participant" shall mean an Employee who meets the requirements for participation in the Plan as set forth in Section 1 of Article III.

Section 19. Plan. "Plan" shall mean the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia.

Section 20. Plan Year. "Plan Year" shall mean the period of twelve consecutive months commencing on November 1 and ending on October 31.

Section 21. Pension Board. "Pension Board" shall mean the Board appointed or elected by the City on this Ordinance to represent the City in the administration of the Plan hereby established.

Section 22. Retired Participant. "Retired Participant" shall mean any Participant who has qualified for Retirement under any provision of the Plan and is entitled to receive any pension provided under the Plan.

Section 23. Retirement. "Retirement" shall mean withdrawal from Service from the City and the Participant is eligible for benefits under this Plan.

Section 24. Service. "Service" shall mean regular service rendered as an Employee of the City. Service includes absence from active employment with the City under conditions which are not treated by it as a termination of employment. However, service shall not include accrued but unused annual leave of the Employee. Service also means any tenure of elective office held by an elected or appointed member of the Governing Authority provided that such tenure of elective office does not include any calendar period during which any elected or appointed member of the Governing Authority is also in the regular service of the City as a Full Time Employee.

Section 25. Terminated Participant. "Terminated Participant" shall mean Employees withdrawn from Service, who are entitled to a vested benefit under the provisions of this Plan.

Section 26. Trust Fund. "Trust Fund" shall mean the total amount invested or uninvested, held at anytime in trust for the City under any Trust Agreement, Pension or Investment Contract.

ARTICLE III

PARTICIPATION

Section 1. Eligibility for Participation. Each Employee who is employed by the City on March 1, 1987 and who elected to participate in the Plan shall become a Participant in this Plan on the Effective Date, provided he is then in active Service with the Employer or on an authorized leave of absence.

Each new Employee hired after March 1, 1987 shall become a Participant in the Plan on the first day of the month coinciding with or next following the date he completes one (1) year of continuous Service, provided that he has not attained age sixty-one (61).

Each elected or appointed member of the Governing Authority who holds an elected office of the City on the Effective Date of this Plan shall become a participant on that date.

Each elected or appointed member of the Governing Authority who holds an elective office of the City subsequent to the Effective Date of this Plan shall become a participant on the first day of the month coinciding with or next following the date he completes one (1) year of Service.

Participation in the Plan shall not give any Employee the right to be retained in the employ of the City nor, upon dismissal, to have any right or interest in the fund other than is herein provided.

An Employee or a Participant may elect, in writing, not to participate in the Plan; however, once such an election is made, he may not change the election at a later time to again participate in the Plan.

Section 2. Termination of Participation. Participation shall be deemed to be terminated as of the date of quit, resignation or discharge, by lapse of recall rights after layoff, by ceasing to be an eligible Employee as defined herein or by failure to return to Service as an eligible Employee at the end of an approved leave of absence.

For elected or appointed members of the Governing Authority, participation shall be deemed to be terminated on the date such person vacates his elected office.

A participant shall become a Former Participant when his employment terminates otherwise than by retirement, provided he has earned a vested percentage in his Accrued Benefit.

Section 3. Reinstatement of Participation. An Employee who has lost his status as a Participant in accordance with Section 3 of this Article shall again become a Participant as of the first day of the month following the date he is reemployed.

ARTICLE IV

CONTRIBUTIONS

Section 1. City Contributions. The City shall make the necessary Contributions to fund this Retirement Plan. The amount of these Contributions shall be based upon the mortality tables adopted by the Actuary, the benefits provided in the Plan, and the number of Participants and their respective ages, earnings and lengths of Creditable Service and such other factors as the Actuary shall deem appropriate to properly fund this Plan. All Contributions by the City shall be used only for the benefit of the Participants and eligible Beneficiaries. City Contributions shall be collected and remitted to the Investment Manager as required.

Section 2. Prospective Benefit Change. The Employer may at its discretion elect to modify the prospective Plan benefits by amendment in the event that the required contribution as determined under Section 1 of this Article is 14.39% or more of covered payroll or 11.78% or less of covered payroll for any single year. The prospective Plan benefits may be modified in the event the required contribution level is outside the range as outlined above during a single year for any reason, including but not limited to the addition or reinstatement of any statutory or court mandated benefits, whether related to this Plan or the Retirement Plan adopted by Ordinance 4022 as amended, any financial or other experience, or any other unforeseen events. In addition, the prospective Plan benefits may be modified in the event that OASDI benefits are reinstated for all employees. Covered payroll shall mean the total annual earnings of all Participants in the Plan as reported by the City to the Actuary for the most recent actuarial valuation of the Plan.

ARTICLE V

ELIGIBILITY FOR BENEFITS AND AMOUNTS

Section 1. Eligibility for a Normal Retirement Benefit. A Participant shall be eligible to retire on a Normal Retirement Benefit upon the later of:

- (a) attainment of age sixty-five (65), or
- (b) completion of five (5) years of Credited Service.

Elected or appointed members of the Governing Authority shall be eligible to retire on a Normal Retirement Benefit upon attainment of age sixty-five (65), and completion of five (5) years of Credited Service. However commencement of benefits shall be delayed until the first day of the month coinciding with or next following the date he vacates such elective office.

Section 2. Amount of Normal Retirement Benefit. The monthly amount of the Normal Retirement Benefit shall be equal to 2% or the percentage as revised in accordance with Article IV, Section 2 of the Participant's Final Average Earnings multiplied by the years of Credited Service which he has completed (up to a maximum of 35 years of Credited Service).

The monthly amount of Normal Retirement Benefit for an elected or appointed member of the Governing Authority, exclusive of any others periods of Service as an eligible Employee, shall be \$20.00 multiplied by the number of full years of Credited Service and any major fraction thereof.

Section 3. Eligibility for an Early Retirement Benefit. A Participant shall be eligible to retire on the first day of any month following his attainment of age fifty-five (55), provided he has completed at least five (5) years of Credited Service.

Section 4. Amount of Early Retirement Benefit. The monthly amount of the Early Retirement Benefit shall be equal to the benefit determined in Section 2 of this Article, reduced by one-quarter of one percent ($1/4$ of 1%) for each month by which the Participant is younger than sixty-five (65) on the effective date of his Early Retirement.

Section 5. Eligibility for an Unreduced Early Retirement Benefit. A Participant shall be eligible to retire on an Unreduced Early Retirement Benefit, provided he is at least age fifty-five (55) and the sum of his age plus Credited Service equals at least eighty-five (85).

Section 6. Amount of Unreduced Early Retirement Benefit. The monthly amount of the Unreduced Early Retirement Benefit shall be equal to the benefit determined in accordance with Section 2 of this Article.

Section 7. Eligibility for a Late Retirement Benefit. A Participant whose employment with the Employer continues after his Normal Retirement Date will receive a Late Retirement Benefit commencing on the first day of the month following the month in which his employment ceases.

Section 8. Amount of Late Retirement Benefit. The monthly amount of the Late Retirement Benefit shall be equal to the benefit determined in Section 2 of this Article.

Section 9. Eligibility for a Vested Retirement Benefit. A Terminated Participant shall be eligible to retire and receive a Vested Retirement Benefit if his employment with the employer terminates voluntarily or involuntarily for any reason other than death, Normal, Early, or Disability Retirement, provided he has completed at least five (5) years of Credited Service.

A Participant whose employment is terminated voluntarily or involuntarily because he is disabled shall be entitled to a Vested Benefit provided he qualifies for a Disability Retirement, (in accordance with Section 11 of this Article), within one (1) year of termination of employment.

Benefits shall commence on the first day of the month in which the Terminated Participant attains his Normal Retirement Date. If an Employee is a Participant in the Plan on March 1, 1987, and later terminates his employment with the Employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following his attainment of age fifty-five (55), provided he has completed at least five (5) years of Credited Service.

In the event a Participant is involuntarily terminated for reasons other than wilful misconduct, he shall be eligible to retire at any time after attaining his Early Retirement Date, provided he has at least twenty (20) years of Credited Service on the date he terminates his employment.

Section 10. Amount of Vested Retirement Benefit. The monthly amount of the Vested Retirement Benefit shall be equal to benefit determined in Section 2 of this Article, based on the benefit rate in effect at the time the Former Participant terminated his employment.

Section 11. Eligibility for a Disability Retirement Benefit. A Participant shall be eligible to retire on a Disability Retirement Benefit if he becomes disabled, as defined in Section 6 of Article II. If the disability is non-job related, the Participant must have completed at least twelve (12) months of continuous Service.

Section 12. Amount of Disability Retirement Benefit. The monthly amount of the Disability Retirement Benefit shall be determined in accordance with Section 2 of this Article. In no event, however, shall the Benefit be less than fifty percent (50%) of the Participant's

average monthly Earnings for the twelve (12) month period immediately preceding his termination of employment as a result of a disability (or the average monthly Earnings for the actual number of months worked, if less than twelve (12)).

Section 13. Evidence of Disability. Upon receipt and acceptance for disability retirement by the Pension Board, the applicant must furnish such evidence of disability in writing on a form provided by the City to substantiate a claim of disability as set forth in the definition of disability established in Section 6 of Article II. The Pension Board may request such additional evidence as it deems necessary to substantiate a disability claim including additional examination by an independent physician of its choice. The cost of such additional examination shall be paid by the Employer.

Section 14. Termination of Disability Retirement Benefit. A period of total disability ceases on the earliest of the following dates:

- (a) The date the Participant ceases to be totally disabled;
- (b) The date the Participant commences work at a reasonable occupation for which the employee may be engaged or may reasonably become engaged, fitted by education, training or experience;
- (c) The date the Participant fails to furnish proof of the continuance of total disability or refuses to be examined when required;
- (d) The date the Participant ceases to be under the care of a physician, or
- (e) The date of the Participant's death.

Section 15. Successive Period of Disability. Notwithstanding the fact that a Participant may initially be determined disabled, and subsequently have Disability Retirement Benefits terminated because of the occurrence of any event set forth in Section 14 of this Article, said Participant may continue to be eligible for a successive period of Disability Benefits, if the Participant is later determined disabled again as provided under Section 13 of this Article. The purpose of the successive disabilities rule is to encourage the Participant to return to full-time work by assuring if the disability occurs again due to the same or related cause soon after returning to work, the Participant will not have to complete a new qualifying period in order to qualify for benefits.

Section 16. Definition of Physician. The term "physician" means a legally qualified physician, except that with respect to a period of total disability, or any portion thereof, during which total disability is caused by any condition other than a medically determinable physical

impairment, "physician" shall mean a legally qualified physician who either specializes in the practice of psychiatric medicine or has by reason of training or experience, a specialized competency in the field of psychiatric medicine sufficient to render the necessary evaluation and treatment of mental illness.

Section 17. Non-duplication of Benefits. Nothing contained in this Plan shall be construed as permitting any person to be entitled to more than one type of benefit under this Plan or change the type of benefit elected once he has begin to receive benefits payments, unless otherwise specified in this Plan.

Section 18. Return to Employment After Retirement.

- (a) Employment in the Same Capacity. Any retirement benefit payable under this Plan to any Participant who has retired and commenced receiving benefits, shall be suspended as of the month in which he is reemployed as an eligible Employee by the Employer. Benefits shall be resumed as of the first day of the month coinciding with or next following his subsequent Retirement; said benefits shall be recalculated in accordance with this Article on the basis of his aggregate Credited Service and Final Average Earnings at the time of his subsequent Retirement, but reduced on an actuarial basis by the value of any Early Retirement Benefits received prior to being reemployed, provided that the resulting benefit shall not be less than the benefit payable at the time of this previous Retirement.
- (b) Election or Appointment to the Governing Authority. If a Participant is elected or appointed as a member of the Governing Authority after he has retired from employment in another capacity under this Plan, he shall be eligible to earn Credited Service, after he has met the participation requirements for elected or appointed officials, as set forth in Section 1 of Article III. He shall be eligible to receive a Normal Retirement Benefit as an elected or appointed official provided he has met the requirements as set forth in Section 1 of Article V. During the period in which said Participant is holding an elected or appointed office with the Governing Authority, he shall continue to receive Retirement benefits previously awarded under the Plan, however, such benefits shall not be recalculated as a result of his employment as an elected or appointed official.
- (c) Disability Retirement. Any Disability Retirement benefit payable under this Plan to any Participant who shall have retired or been retired pursuant to any provision of Section 2 of Article V shall be suspended as of the date his Disability ceases. In any case where the payment of a Participant's Disability Retirement pension shall have been so suspended, said period of absence from employment due to such

Disability shall be treated as a leave of absence without pay, but shall not be counted toward Future Service. Any Participant who shall have retired or been retired pursuant to the provisions of Section 11 of Article V and who dies or who has been or shall be subsequently declared ineligible for a Disability Retirement benefit because of a cessation of said Disability shall have a right to any benefit afforded under any other provision of this Plan to which he might otherwise be entitled. In such a case any Disability Retirement payments made prior to the date his Disability ceases or is declared to no longer exist shall be retained by the Participant and disregarded in computing any other benefit payable under this Plan.

ARTICLE VI

CREDITING OF SERVICE AND BREAK IN SERVICE

Section 1. General. Service and Credited Service shall be granted to a Participant for the purpose of determining such Participant's vested percentage of his Accrued Benefit and for computing the amount of benefits payable under this Plan.

Section 2. Past Service. A Participant shall be entitled to receive Past Service and Past Credited Service for the number of years and full months of continuous employment with the Employer prior to November 1, 1973. Past Service shall also be granted for any tenure of elected office of an elected or appointed member of the Governing Authority who was serving as an eligible Employee or an elected or appointed official, or both, on November 1, 1973. Otherwise, Past Service shall not include any tenure of elective office as an elected or appointed member of the Governing Authority.

Section 3. Future Service. A Participant shall earn Future Service and Future Credited Service for the number of years and full months of continuous employment with the Employer on and after November 1, 1973.

Elective or appointed members of the Governing Authority shall earn Future Service and Future Credited Service for all periods of elected office, whether or not successive, however any break in his tenure of elective office will not be considered as a period of Future Service or Future Credited Service.

Section 4. Break in Service. A Participant will incur a Break in Service upon his termination of employment with the Employer. A Participant who is vested upon termination of employment shall be eligible for a Vested Retirement Benefit in accordance with Section 9 of Article V. A Participant who is not vested upon termination of employment shall lose his Service and Credited Service. However, if the Participant later returns to work with the Employer and earns the number of years required to earn a vested percentage of his Accrued Benefit, then his previous years of Service and Credited Service shall be restored.

Section 5. Exceptions to Break in Service. An exception to the Break in Service provisions shall be allowed and a grace period granted if the Participant's failure to earn Service is due to:

- (a) an Employee's absence from Service by reason of (1) her pregnancy, (2) birth of a child of the Employee, (3) placement of a child with the Employee in connection with his or her adoption of the child, or (4) care for such child for a period beginning immediately after such birth or placement. Such

absence shall be credited as hours of employment to a maximum of three (3) months for each such pregnancy, childbirth, or placement. The time so credited shall be applied to the Plan Year in which such absence begins, if doing so will prevent the Employee from incurring a Break in Service in that Plan Year; otherwise they shall be applied to the next Plan Year;

(b) the Employee's absence for the purpose of involuntary service in the Armed Forces of the United States;

(c) disability, for which the Employee is receiving a Disability Retirement Benefit; or

(d) an authorized leave of absence,
provided:

(1) the individual was regularly employed by the Employer immediately prior to his leave of absence;

(2) the individual makes application for reemployment on or before the date of expiration of any leave of absence or within ninety (90) days after he first becomes entitled to his discharge from military service; and

(3) the individual is reemployed as an eligible Employee within ninety (90) days after such application.

Section 6. Vesting. A Participant who has completed at least five (5) years of Service shall have his Credited Service vested and the Break in Service rules as set forth in Section 4 of this Article shall not operate to deprive him of his accumulated Credited Service.

ARTICLE VII

FORMS OF BENEFIT PAYMENT

Section 1. Normal Form of Payment. The normal form of benefit payment shall be a Single Life Benefit, payable monthly to the Retired Participant. Benefits will cease as of the month in which the Participant's death occurs.

Section 2. Election of Optional Retirement Benefit. A Participant may elect, or may revoke said election, at any time prior to his actual Retirement Date, to have his Retirement Benefit payable under the options hereinafter set forth, in lieu of the Single Life Benefit he is otherwise entitled to receive. The benefit shall be paid in accordance with the terms of said option. Election of said option shall be made by the Participant in writing. The amount of the optional Retirement benefit shall be the Actuarial Equivalent of the amount of benefit that would otherwise be payable to the Participant under Article V.

Section 3. Social Security Option. A Participant may elect this Option and receive an increased Retirement Benefit payable to the Participant during his lifetime until he is eligible for benefits commence under O.A.S.D.I. and a decreased Retirement Benefit payable thereafter for life in order to have a more level retirement income when such decreased Retirement Benefit is added to his primary benefits under O.A.S.D.I. determined as of his Early Retirement Date; said benefit shall be computed in accordance with the factors set forth below. At the death of the Participant all payments will cease and no further benefits shall be payable.

The factors set forth below shall be applied to the assumed O.A.S.D.I. benefit payable at the appropriate age. This amount shall then be added to the monthly benefit determined in accordance with Section 4 of Article V. When O.A.S.D.I. benefits commence, the benefits payable under this Plan shall be reduced by the amount of the assumed O.A.S.D.I. benefits.

O.A.S.D.I. Benefits Paid at Age

<u>AGE</u>	<u>65</u>	<u>62</u>
55	.3670	.5071
56	.4022	.5558
57	.4414	.6101
58	.4853	.6708
59	.5346	.7390
60	.5900	.8156
61	.6525	.9021
62	.7232	n/a
63	.8035	n/a
64	.8951	n/a

Section 4. Joint and Survivor Benefit. A Participant may elect to receive an actuarially reduced monthly Retirement Benefit with a continuation upon his death after Retirement of fifty percent (50%), seventy-five percent (75%) or one hundred percent (100%) of his benefit, to that person he might name as his Beneficiary, with the continuation of benefits being for the life of the beneficiary.

The Participant's monthly amount shall be a percentage of the full monthly amount otherwise payable as a Single Life Benefit (after adjustment, of any, for Early Retirement) as follows:

(1) 50% Joint and Survivor Option -

(a) If the Participant's pension is a Non-disability Retirement - the percentage shall be 88.0% plus 0.4% for each full year that the Beneficiary is older than the Participant or 88.0% minus 0.4% for each full year that the Beneficiary is younger than the Participant;

(b) If the Participant's pension is a Disability Pension - the percentage shall be 77.5% plus 0.4% for each full year that the Beneficiary is older than the Participant or 77.5% minus 0.4% for each full year that the Beneficiary is younger than the Participant;

(c) In no event is the percentage to be greater than 99%; and

(2) 75% Joint and Survivor Option -

(a) If the Participant's pension is a Non-disability Retirement - the percentage shall be 83.5% plus 0.5% for each full year that the Beneficiary is older than the Participant or 83.5% minus 0.5% for each full year that the Beneficiary is younger than the Participant;

(b) If the Participant's pension is a Disability Pension - the percentage shall be 70.0% plus 0.5% for each full year that the Beneficiary is older than the Participant or 70.0% minus 0.5% for each full year that the Beneficiary is younger than the Participant;

(c) In no event is the percentage to be greater than 99%; and

(3) 100% Joint and Survivor Option -

(a) If the Participant's pension is a Non-disability Retirement - the percentage shall be 79.0% plus 0.6% for each full year that the Beneficiary is older than the Participant or 79.0% minus 0.6% for each full year that the Beneficiary is younger than the Participant;

(b) If the Participant's pension is a Disability Pension - the percentage shall be 63.0% plus 0.6% for each full year that the Beneficiary is older than the Participant or 63.0% minus 0.6% for each full year that the Beneficiary is younger than the Participant;

(c) In no event is the percentage to be greater than 99%.

ARTICLE VIII

MAXIMUM RETIREMENT INCOME BENEFITS

Section 1. Maximum Retirement Income Benefits

(a) General Limit

- (1) Notwithstanding any other provision of this Plan, the annual pension payable with respect to any Employee shall not exceed \$90,000 (or such higher amount as the IRS may prescribe for a year) or, if lower, 100% of the Employee's average Compensation in the period of three consecutive calendar years in which his Compensation was the highest.
- (2) This limit shall not apply to any pension that does not exceed \$1,000 a year for each year of service with an Employer, including years before the Employer adopted this Plan, up to a maximum of \$10,000, unless the Employee has also been covered by an individual account plan to which an Employer contributed on his behalf.
- (3) The limitations in this Section shall be applied as if all Employers were a single Employer, without distinguishing among them as to the source of an Employee's benefits, contributions, earnings or service.

(b) Definitions

For purpose of this Section:

- (1) "Pension" means an annual benefit payable at age 65 as a straight life annuity with no ancillary benefits, a Joint and Survivor Pension, and a Disability Pension. A benefit payable in any other form shall be converted to the actuarial equivalent of a straight life annuity, for purposes of applying these limits, based on a 7% interest assumption. Other required adjustments are provided for below.
- (2) "Compensation" means all earnings and any other taxable compensation received for a year from any Employer, or from any company in an Employer's controlled group or affiliated service group within the meaning of sections 414(b), (c), or (m) of the Internal Revenue Code.

(c) Adjustments for Early or Late Commencement of Benefits

- (1) If benefit payments start before the recipient has reached age 62, the \$90,000 limit in subsection (a) (1) of this

Section shall be reduced to the actuarial equivalent of a \$90,000 pension beginning at age 62, but not below \$75,000. If benefit payments start before age 55, that dollar limit shall be the actuarial equivalent of a \$75,000 pension starting at age 55. This section shall not apply to a Disability Pension.

- (2) If benefit payments start after the recipient has reached age 65, the \$90,000 limit in subsection (a)(1) of this Section shall be increased to the actuarial equivalent of a \$90,000 pension starting at age 65.
- (3) Actuarial equivalence under this Section shall be determined using a 5% interest assumption, and the term "\$90,000" shall include any higher amount prescribed by IRS for purposes of these limitations.

(d) Protection of Prior Benefits

For any year before 1987, the limitations prescribed by section 415 of the Internal Revenue Code as in effect before enactment of the Tax Equity and Fiscal Responsibility Act of 1982 shall apply, and no pension earned under this Plan prior to 1987 shall apply, and no pension earned under this Plan prior to 1987 shall be reduced on account of the provisions of this Section if it would have satisfied those limitations under that prior law.

ARTICLE IX

APPLICATION, BENEFIT PAYMENTS AND

CLAIM PROCEDURES

Section 1. Benefits Payments Generally.

- (a) A Participant who is eligible to receive benefits under this Plan and makes application in accordance with the rules of this Retirement Plan shall be entitled upon retirement to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this Plan. Benefit payments shall be payable commencing with the first full calendar month in which the Participant has fulfilled all the conditions for entitlement to benefits.
- (b) However, in no event shall deferral of commencement of benefits be allowed whereby it can be reasonably anticipated (except on account of premature death) that benefits will inure primarily to a Beneficiary rather than to the Employee.
- (c) Pension Payment shall end with the payment for the month in which the death of the Pensioner occurs, except as provided in accordance with a Joint and Survivor Benefit.
- (d) Pension benefits shall be payable commencing with the month following the month in which the claimant has fulfilled all the conditions for entitlement to benefits, including the requirement of Section 2 of the filing of an application and notice of retirement with the Pension Board. The first day of such first month is what is meant by the "effective date" of the pension.

An Employee may elect, in writing filed with the Pension Board, to receive benefits first payable for a later month, provided that no such election may postpone the commencement of benefits to a date later than April 1 following the calendar year in which the Employee will reach age 70 1/2, or, if later, retires.
- (e) If a Participant's beneficiary is not his surviving spouse, the payment of any benefits under the Plan that become payable on account of the Participant's death shall begin no later than one year from the date of death and shall be distributed over the life of the beneficiary (or a period not extending beyond the life expectancy of such beneficiary).

Section 2. Filing An Application for Benefits. A Participant must file an application for benefits under the Plan no earlier than ninety (90) days and no later than thirty (30) days in advance of the date benefit payments are to commence. Such request may be in any form adequate to give reasonable notice to the Pension Board and shall set forth the basis of such application and shall authorize the Pension Board to conduct such examinations as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the Plan.

Section 3. Claims. Any payment to a Participant, or Beneficiary, or to their legal representatives, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Pension Board or the City, either of which may require such Participant, Beneficiary, or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Pension Board or the City, as the case may be.

Section 4. Fraud, Embezzlement, Theft, and Dismissal for Cause. In the event the Employer shall receive prior to a Participant's actual Retirement Date, written confession by such Participant, or proof satisfactory to the Pension Board that such Participant has committed or has been convicted of having committed a felony in connection with his duties or in the course of his employment with the City, or in connection with the Plan, his participation in the Plan shall be forthwith terminated; and any vested interest that such Participant may have in the fund shall be forfeited.

Section 5. Errors in Computation of Benefits. Any overpayments or underpayments from the Plan to a Retired Participant or to a Beneficiary caused by errors of computation shall be adjusted. Underpayments shall be made up from the Plan.

ARTICLE X

PENSION BOARD

Section 1. Definitions and Rules of Construction.

- (a) Board shall mean the Pension Board created by this Article.
- (b) Police and Fire Employees shall mean the sworn personnel of the police and fire departments.
- (c) General Employees are personnel other than the sworn personnel of the police and fire departments.
- (d) Council shall mean the Governing Authority of the City of Marietta which shall include the Mayor and members of the Council.
- (e) In computing time required under this ordinance, time shall be computed without exclusion of Sundays and holidays.
- (f) When used in this ordinance, the male gender shall include the female and neuter genders.

Section 2. Creation. There is hereby created in the City of Marietta a Pension Board which shall consist of such members elected and appointed and having such duties, functions and powers as are hereinafter prescribed.

Section 3. Functions and Powers. The Pension Board shall have the following duties, functions and powers:

- (a) In dealing with those persons participating or eligible to participate in any pension, retirement or disability program, the Pension Board shall:
 - (1) Handle distribution of all reports to Participants.
 - (2) Handle arbitration between the City and the Participants in all matters regarding the Plan.
 - (3) Handle any notices of eligibility, benefits, available options, and any other notices required by this Plan, contract or rules and regulations.
 - (4) Decide all questions and disputes on the interpretation and eligibility of persons for payment under any pension, retirement and disability ordinance of the City of Marietta.

(b) In performance of its duties, the Pension Board shall have the following powers:

- (1) Recommend to the Council the awarding of contract(s) for actuarial, and investment management and other administrative services as needed;
- (2) Adopt rules and regulations providing procedures for the granting of pension, retirement and disability benefits and to approve payments for such persons entitled to payment;
- (3) Adopt investment programs and procedures for funds held by any Investment Manager;
- (4) Adopt all documents issued by the Board;
- (5) Review and recommend changes in the pension, retirement and disability program;
- (6) When requested by the City Manager, to advise the City manager on all pension, retirement, or disability payment matters; and
- (7) To do all other things necessary and proper to carry out the duties required of it as the Pension Board of the City of Marietta.

Section 4. Appeal and Procedure. Any person dissatisfied with any decision of the Pension Board shall have the right to appeal the decision to the Council by delivering to the City manager a written notice within ten (10) days of the decision complained of. The City manager shall cause the secretary of the Pension Board, within ten (10) days after such receipt, to provide to the Clerk of the Council all documents relied upon by the Pension Board in reaching its decision. The Council shall decide the appeal within seventy-five (75) days of receipt of the appeal documents from the secretary of the Pension Board. Should the Council fail to act within seventy-five (75) days of the decision of the Pension Board, the decision of the Pension Board shall be affirmed. In ruling on any appeal from the Pension Board, the decision of the Pension Board shall be presumed correct and based upon sufficient facts to sustain it.

Section 5. Membership and Operation of Pension Board. The Pension Board shall consist of nine (9) members elected from posts as follows:

Post 1: City Manager or his designee

Post 2: Council Member

Post 3: Council Member

- Post 4: General Employee Representative
- Post 5: General Employee Representative
- Post 6: General Employee Representative
- Post 7: General Employee Representative
- Post 8: Police Department Representative
- Post 9: Fire Department Representative

The police chief and fire chief shall be ex-officio members of the Pension Board and shall only vote in the absence of the police and fire representatives.

Terms. All members shall be elected as hereinafter provided in December and shall begin service on January 1 for a term of two (2) years.

Selection of Council, Police, Fire and General Employee Members:

Council Representative. Two (2) members of the Council shall serve on the Pension Board. They shall be appointed by the Mayor with consent of the Council and shall serve for their duly elected term. If for some reason a duly appointed member cannot fulfill his or her term of the Board, he or she shall be replaced by a member of the Council appointed by the Mayor with consent of the Council.

Police Representative. One member of the Pension Board a representative of the police department. The senior officer in each of the ranks of police assistant chief, police captain, police lieutenant, police sergeant, detective and police officer shall serve as a nominating committee for the police department. The highest ranking officer shall serve as chairman of the nominating committee.

Fire Representative. One member of the Pension Board shall be a representative of the fire department. The senior officer in each of the ranks of assistant fire chief, fire captain, firefighter engineer, and firefighter shall serve as a nominating committee for the fire department. The highest ranking officer shall serve as a chairman of the nominating committee.

Election of Police and Fire Representatives. The chairman of each respective nominating committee of police and fire shall call a meeting of the committee in December of the year immediately preceding the termination of the police and fire representatives on January 1 of the next year. The purpose of this meeting will be to nominate three (3) employees from each of the departments of fire and police. The names of the three (3) employees nominated shall be placed on a ballot with space provided for write-ins. Ballots shall be distributed by the nominating committees to all of the employees in the respective departments of

police and fire. Ballots shall be marked in secret and returned to the nominating committee the same day they are distributed. Each employee will vote for one (1) candidate and the candidate receiving a plurality of votes shall be the representative of their respective departments to the Pension Board. If for any reason duly elected representative of the police or fire departments cannot fulfill his or her office, the respective nominating committee shall designate a replacement for the duration of the vacated membership.

General Employees. Four (4) members of the Pension Board shall be representatives of the General Employees. A nominating committee consisting of the director of personnel, or a designee thereof; two (2) persons appointed by the director of public works, one (1) of which cannot be in a supervisory position; two (2) persons appointed by the director of electrical affairs, one (1) of which cannot be in a supervisory position; two (2) persons appointed by the city manager, one (1) of which cannot be in a supervisory position; and two (2) persons appointed by the director of parks and recreation, one (1) of which cannot be in a supervisory position, shall nominate the candidate for membership on the Pension Board. The director of personnel, or the designee thereof, shall act as presiding officer of the nominating committee and call a meeting of the committee the first day of December in the year immediately preceding the end of the current members term. The purpose of this meeting shall be to nominate two (2) candidates for each expiring term of a member of the Pension Board represented by the General Employees. The names of such employees nominated shall be placed on a ballot with space provided for write-ins. Ballots shall be distributed to all general employees. Ballots shall be marked in secret and returned to the nominating committee the same day they are distributed. Each employee will vote for as many candidates as there are representative seats of the General Employees expiring on January 1. The candidates receiving the highest plurality votes for such seats shall be selected as the representatives of the General Employees to the Pension Board. If for any reason the duly elected representatives of the General Employees cannot fulfill his or her office, the nominating committee shall designate a replacement for the duration of vacated membership.

Officers. The Pension Board may elect such officers as it deems necessary. The Board shall elect a chairman and a secretary.

The chairman shall preside at meetings of the Board, cast a vote on any issue, call meetings as may be necessary, and do all things necessary to carry on the orderly affairs of the Board. The chairman shall be selected by a majority vote of the Board for a one-year term. The Board shall designate, in writing, a secretary or other representative who shall have full authority to represent the Board in all communications with any provider and the City's employees, including elected and appointed members of the Governing Authority. The secretary shall keep accurate minutes of all meetings of the Board, recording those voting for and against any issue. Minutes shall be distributed to each member of the Board, the Council of the City of Marietta and shall be posted in a prominent place(s) within the City Government Complex.

Legal Assistance. The City Attorney or other attorney appointed by the Governing Authority shall furnish legal advice to the Pension Board on any issue before it upon which legal advice is sought.

Meetings. The Pension Board shall meet at least quarterly. Five (5) members of the Board (including the chairman) shall constitute a quorum. The City Manager or his designee shall have authority to approve pension, retirement and disability payments pending a meeting of the Board.

Rules of Procedure. The Pension Board shall have the authority to promulgate rules and regulations for its internal operation, as well as the approval of payments within its jurisdiction.

ARTICLE XI

AMENDMENT AND TERMINATION

Section 1. Amendment of the Plan. The Governing Authority shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of the Plan following the review and recommendation by the Pension Board; provided, however, that no such amendment shall:

- (a) Reduce the accrued benefits of any Participant or Beneficiary, or
- (b) Authorize or permit any part of the Trust Fund held by the Provider to be diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries, and
- (c) No amendment shall operate to deprive any Participant or Beneficiary of any rights or benefits irrevocably vested in him under the Plan prior to such amendment except that the Governing Authority may make any and all changes and modifications necessary to qualify the Plan or to keep the Plan qualified under the Internal Revenue Code and the regulations thereunder, or any amendment thereto.

Section 2. Termination of the Plan.

- (a) The Employer expects the Plan to be continued indefinitely but, of necessity, reserves the right to terminate the Plan and Contributions thereunder at any time by action of the Governing Authority. Upon receipt of written notice from the Governing Authority of termination of the Plan, the Board shall prepare a list of all Participants showing for each, as of the date of Plan termination, the following:
 - (1) For each Retired Participant and Beneficiary receiving payment of benefits, the amount and terms of payment of such benefits.
 - (2) For each Terminated Participant entitled to a deferred benefit, the amount, commencement date, and terms of payment of such benefit.
 - (3) For each active Participant the amount of his accrued benefit.
- (b) The Board shall arrange for the liquidation of all assets held in the Plan maintained in connection with the Plan and shall prepare a statement of the liquidated value of such assets. The Governing Authority, in its sole discretion, may

direct the Board to purchase from an insurance company an annuity contract or contracts which provide the benefits to which each Participant or Beneficiary is entitled or to pay a lump sum to each Participant or Beneficiary, such lump sum amount to be Actuarial Equivalent of the benefit to which such Participant or Beneficiary is entitled.

- (c) The Board shall then deduct from the assets total remaining expenses incurred or to be incurred by the Board on behalf of the Plan. The Board shall except as otherwise provided in this Section, then allocate the remaining assets for distribution in accordance with the classes listed below. The benefits of each class shall be satisfied before proceeding to the next class. If at any time the remaining Plan assets would be insufficient to provide the accrued benefits for the class in question, the remaining assets would be applied on a pro rata basis within that class, and all subsequent classes would receive no benefit.

CLASS 1 - Retired Participants or Beneficiaries who are receiving payments on the termination date.

CLASS 2 - Participants delaying Retirement.

CLASS 3 - Participants eligible for Early Retirement.

CLASS 4 - Former Employees who are Terminated Participants.

CLASS 5 - All other Participants on a pro rata basis.

- (d) Upon distribution of the assets as specified above, the Plan shall be regarded as terminated and no Participant or Beneficiary shall have any further rights or claim therein.

ARTICLE XII

MISCELLANEOUS

Section 1. Construction.

- (a) The Plan shall be construed in accordance with the laws of the State of Georgia.
- (b) In the event that any section, subsection, sentence, clause or phrase of this agreement shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or sections, subsections, sentences, clauses, or phrases of this agreement, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof. The Governing Authority hereby declares that it would have passed the remaining parts of this agreement or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

Section 2. Non-Alienation of Benefits. None of the benefits, payments, proceeds, or distributions payable under the Plan shall be subject to the claim of any creditor of any Participant or to the claim of any creditor of any Beneficiary hereunder, or to any legal process of levy or attachment by an creditor of any such Participant or Beneficiary; and no such benefits shall be in any manner liable for or subject to the debts, liabilities, engagements, or torts of any Participant or Beneficiary; and neither any such Participant or Beneficiary shall have any right to alienate, commute, anticipate, transfer, encumber, pledge or assign any of the benefits, payments proceeds, or distributions under the Plan. If any Participant or Beneficiary shall become bankrupt or attempt to anticipate, assign, or pledge any benefits, then such benefits shall, in the discretion of the Pension Board, cease, and in that event the Pension Board shall have authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such member, his spouse, his children, or other dependents, or any of them, in such manner and in such proportion as the Pension Board may think proper.

Section 3. Legally Incompetent. Any Participant or Beneficiary receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent and of age until the Pension Board receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed. In

the event that the Pension Board finds that any person to whom a benefit is payable under the Plan is unable to properly care for his affairs, or is a minor, then any payment due (unless a prior claim therefor shall have been made by a duly appointed legal representative) may be paid to the spouse, a child, a parent, or a brother or sister, or to any person deemed by the Pension Board to have incurred expense for such person otherwise entitled to payment. In the event a guardian of the estate of any person receiving or claiming benefits under the Plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian provided that proper proof of appointment is furnished in a form and manner suitable to the Pension Board. Any payment so made shall be a complete discharge of liability therefor under the Plan.

Section 4. Benefits Supported Only By Trust Fund. Any person having any claim under the Plan will look solely to the assets of the Trust Fund for satisfaction. In no event will the Employer, or any of its employees or agents, be liable in their individual capacities to any person whosoever, under the provisions of the Plan.

Section 5. Discrimination. The Employer through the Pension Board, shall administer the Plan in a uniform and consistent manner with respect to all Participants and shall not permit discrimination in favor of supervisory or highly paid Employees, elected or appointed members of the Governing Authority, the chief legal officer or any associate legal officer of the City, or any municipal officer elected or appointed to preside over the court of said City.

Section 6. Limitation of Liability; Legal Actions.

- (a) It is expressly understood and agreed by each Employee who becomes a Participant hereunder that, except for its or their willful neglect or fraud, neither the Employer, nor the Pension Board, shall be in any way subject to any suit or litigation, or to any legal liability, for any cause or reason or thing whatsoever, in connection with the Plan or its operation, and each such Participant hereby releases the Employer, all its Employees and agents, and the Pension Board, from any and all liability or obligation.
- (b) To any action or proceeding involving any rights under the Plan or the proper administration thereof, the City and the Pension Board shall be the only necessary parties and no Participant, or his Beneficiary, or any other persons having or claiming to have an interest in the Plan shall be entitled to any notice or process. Any final judgment which is not appealed or

appealable that may be entered in any such action or proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have an interest.

IN WITNESS WHEREOF, the City has caused the signatures of its authorized officers to be affixed this 11th day of February, 1987.

CITY OF MARIETTA, GEORGIA

DATE: February 11, 1987

Vicki Chestnut
MAYOR

ATTEST:

William C. Harris
CITY CLERK